

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

FAO-4195-2012 (O&M)

Gursewak Singh

.....Appellant

Versus

Hardev Singh and others

.....Respondents

(2)

FAO-6571-2012 (O&M)

Hardev Singh and another

.....Appellants

Versus

Gursewak Singh and others

.....Respondents

Date of Decision:27.03.2018

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. Amit Arora, Advocate,
for the appellant in FAO-4195-2012 and
for respondent No.1 in FAO-6571-2012.**

**Ms. Sunita Nambiar, Advocate for
Mr. Balkar Singh, Advocate,
for the appellants in FAO-6571-2012 and
for respondent Nos.1 and 2 in FAO-4195-2012.**

**Mr. Sanjiv Kodan, Advocate,
for respondent No.3-Insurance Company
in FAO-4195-2012.**

HARI PAL VERMA, J.(Oral)

These two identical appeals bearing FAO No.4195 of 2012
(Gursewak Singh Versus Hardev Singh and others) and FAO No.6571 of
2012 (Hardev Singh and another Versus Gursewak Singh and others),

are being decided together, by this common order as both these appeals

have arisen out of the same award. However, for the facility of reference, facts are being culled out from **FAO No.4195-2012 (Gursewak Singh Versus Hardev Singh and others)** filed by the appellant, who was a driver of the offending vehicle bearing registration No.RJ-07G-5359.

Learned counsel for the appellant-driver has argued that in a claim-petition filed under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Ajit Singh in a motor vehicular accident, which took place on 20.12.2008, learned Motor Accident Claims Tribunal, Tarn Taran (for short “the Tribunal”) has awarded an amount of Rs.1,00,000/- to the claimants vide award dated 03.04.2012. The appellant-driver was arrayed as respondent No.1 in the claim petition, whereas respondent No.3-Hanuman Sarswant was the owner of the offending vehicle. But the Tribunal had dismissed the claim-petition qua respondent No.3-owner under Order 9 Rule 2 CPC. He states that appellant-Gursewak was merely a driver of the offending vehicle whereas the said vehicle was owned by respondent No.3-Hanuman Sarswant and was duly insured with respondent No.4-Reliance General Insurance Company. He states that merely because the owner has been proceeded under Order 9 Rule 2 CPC, the appellant-driver should not be made to suffer on account of non-appearance on the part of the owner.

On the other hand, learned counsel for respondent No.4-Insurance Company has argued that there is no illegality in the award as the court has rightly proceeded under Order 9 Rule 2 CPC. Since the owner has not opted to appear before the Tribunal and the appellant was arrayed as a party, the liability has rightly been fixed.

I have heard the learned counsel for the parties.

The claim of the appellant-driver is based on the outcome of relationship between him and the owner. In case, the claimants have not been able to serve summon to respondent No.3, the appellant-driver should not be made to suffer. No details have come forward in the award as to when and in what manner, efforts were made to serve respondent No.3-owner of the offending vehicle. Therefore, in the absence of such like details, this Court finds that both the cases are required to be remanded back for afresh decision for which the owner shall also be issued fresh notice as required under law.

With the aforesaid observations, the award dated 03.04.2012 is hereby set aside. The cases are remanded back to the Tribunal for a fresh decision on merits. Merely because the cases have been remanded back to the Tribunal for fresh decision, it shall not cause any prejudice to the rights of either of the parties, in any manner.

Parties are directed to appear before the Tribunal on 10.05.2018.

March 27, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No